Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal against Order No. 448 of 2003

The Oriental Insurance Company Ltd.,
Manjul Place, Lytton Road, Dehradun
through its Branch Manager,

..... Appellant.

Versus

1. Km. Divya Kulshresth
   D/o Dr. O.P.Kulshresth,
   R/o 76/131, Saket, Rajpur Road,
   Dehradun

.....Claimant/Respondent

2. Dr. O.P. Kulshresth S/o Sri Raman Lal,
   R/o 76/131, Saket, Rajpur Road,
   Dehradun.

..... Respondent.

.....

Sri Pankaj Purohit, learned counsel for the appellant.
None for the respondents.

Date: 31st Aug., 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred against the judgment and award dated 08.10.2003 passed by Motor Accident Claims Tribunal/Addl. District Judge/Fast Track Court II, Dehradun in Motor Accident Claim Case No. 120 of 1999, Km. Divya Kulsresth versus The Oriental Insurance Company Ltd. and another, whereby the claim petition of the claimant has been allowed for a compensation of Rs. 14,50,800/- against the Opp. party No.1- Oriental Insurance Company alongwith interest at the rate of 9% per annum from the date of application till the date of final payment.

2- Brief facts giving rise to this appeal are that on 13.5.1999, the claimants alongwith her mother Dr.(Smt.) Rakesh Kulshresth was travelling by Maruti Car No. UP 07F-2511 and was coming from Hathras to Dehradun. When the Car reached near Bulandshahr it lost balance due to some mechanical defect in steering system and it turned turtle, as a result of which the deceased Dr.(Mrs.) Rakesh Kulshresth sustained multiple injuries. The claimant and the Opp. party No.2 also sustained minor injuries in the said accident. The said car was being driven by the claimant's father-Dr. O.P. Kulsresth /Opp. party No.2 in the case. The deceased was taken to District Hospital, Bulandshahr, where she was declared dead. Deceased Dr.(Mrs.)Rakesh Kulshresth was employed as a Lecturer in D.A.V. (P.G.) College, Dehradun and at the relevant time her monthly salary was approximately Rs. 18,800/-. She was 47 years old at the time of accident. The claimant filed the claim petition for a compensation of Rs. 25,27,000/- due to death of her mother in the said accident.

3- The Opposite party No.2 filed written statement in the case before the Tribunal admitting the contents of the claim petition. It was stated that the offending vehicle Car No. UP 07F-2511 was insured with the Oriental Insurance Company. The Opp. party No.1-Oriental Insurance Company also filed its written statement denying the contents of the claim petition. The accident was also denied on the said date, time and place. It was alleged that there is collusion in between the petitioner as well as Opp. party No.2. On the pleadings of the parties, the Tribunal framed necessary issues and on the basis of the evidence allowed the claim petition accordingly. Feeling aggrieved, the Opp. party No.1-Oriental Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Act and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have been referred to the application dated 09.2.2001 contained in Annexure No.3 to the stay application in the appeal, which has been moved before the Tribunal for permission under Section 170 of the Motor Vehicles Act. But the learned counsel could not indicate that permission given by the Tribunal. In this case, the owner of the offending vehicle has contested the case before the Tribunal. There is neither permission of the Tribunal under Section 170 of the Motor Vehicles Act, nor there is any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by

the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

31.08.2004
P.Singh